

§ 2.1235

(d) A party or § 2.1211(b) participant making an initial written presentation under this section shall submit with its presentation or identify by reference to a generally available publication or source, such as the hearing file, all documentary data, informational material, or other written evidence upon which it relies to support or illustrate each omission or deficiency complained of. Thereafter, additional documentary data, informational material, or other written evidence may be submitted or referenced by any party, other than the NRC staff, or by any § 2.1211(b) participant in a written presentation or in response to a written question only as the presiding officer, in his or her discretion, permits.

(e) Strict rules of evidence do not apply to written submissions under this section, but the presiding officer may, on motion or on the presiding officer's own initiative, strike any portion of a written presentation or a response to a written question that is cumulative, irrelevant, immaterial, or unreliable.

[54 FR 8276, Feb. 28, 1989, as amended at 61 FR 39298, July 29, 1996]

§ 2.1235 Oral presentations; oral questions.

(a) Upon a determination that it is necessary to create an adequate record for decision, in his or her discretion the presiding officer may allow or require oral presentations by any party or § 2.1211(b) participant, including testimony by witnesses. Oral presentations are subject to any appropriate time limits the presiding officer imposes. Responsibility for the conduct of the examination of any witness rests with the presiding officer who may allow a party or § 2.1211(b) participant to propose questions for the presiding officer to pose to a witness.

(b) Oral presentations and responses to oral questioning to be relied upon as oral evidence must be given under oath or affirmation. All oral presentations or oral questioning must be stenographically reported and, except as requested pursuant to section 181 of the Act, must be public unless otherwise ordered by the Commission.

(c) Strict rules of evidence do not apply to oral submissions under this

10 CFR Ch. I (1-1-04 Edition)

section, but the presiding officer may, on motion or on the presiding officer's own initiative, strike any portion of an oral presentation or a response to oral questioning that is cumulative, irrelevant, immaterial, or unreliable.

[54 FR 8279, Feb. 28, 1989; 54 FR 53035, Dec. 26, 1989]

§ 2.1237 Motions; burden of proof.

(a) Motions presented in the proceeding must be presented and disposed of in accordance with §§ 2.730 (a)-(g).

(b) Unless otherwise ordered by the presiding officer, the applicant or the proponent of an order has the burden of proof.

§ 2.1239 Consideration of Commission rules and regulations in informal adjudications.

(a) Except as provided in paragraph (b) of this section, any regulation of the Commission issued in its program for the licensing and regulation of production and utilization facilities, source material, special nuclear material, or byproduct material may not be challenged in any adjudication subject to this subpart.

(b) A party to an adjudication subject to this subpart may petition that the application of a Commission regulation specified in paragraph (a) of this section be waived or an exception made for the particular proceeding. The sole ground for a request for waiver or exception must be that special circumstances exist so that application of the regulation to the subject matter of the proceeding would not serve the purposes for which the regulation was adopted. In the absence of a prima facie showing of special circumstances, the presiding officer may not further consider the matter. If the presiding officer determines that a prima facie showing has been made, he or she shall certify directly to the Commission itself for determination the matter of whether special circumstances support a waiver or an exception and whether a waiver or an exception should be granted. The Commission's determination shall be made after any further proceeding the Commission deems appropriate.